Superintendent of Lands and Surveys Kuching Division v Yong Ing Kai & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-01(W)-324–07 OF 2019
YAACOB MD SAM, AZIZAH NAWAWI AND LEE HENG CHEONG JJCA
1 NOVEMBER 2021

Land Law — Acquisition of land — Compensation — Award by Superintendent of Lands and Survey Department — Dispute as to calculation of compensation — Appeal to High Court — Whether to take into consideration market value as at date of publication of notification in s 47 of Sarawak Land Code (Cap 81) ('Land Code') or date of gazette declaration under s 48 — Whether High Court judge erred in using date of s 48 declaration as valuation date to determine compensation — Whether appellate intervention warranted

This was an appeal against the decision of the High Court judge ('HCJ') against the award of compensation for compulsory acquisition of two parcels of land belonging to both the respondents. The respondents had purchased two parcels of land (previously Lot 358 Salak Land District) in 1996 at the price of between RM210,000 to RM300,000 ('said lands'). The said lands were subject to a s 47 of the Land Code (Cap 81) ('the Sarawak Land Code') notification (s 47 notification) issued by the Ministry of Resource Planning on 17 June 1997, published on 16 July 1997, for the intended use 'for the purpose of Sungai Sarawak Flood Mitigation Channel.' Vide a s 48 *gazette* declaration issued by the Ministry of Planning and Resource Management on 8 April 2009 and published on 2 July 2009, both parcels of the said lands were later declared to be for the 'Proposed flood bypass from Sg Sarawak to Batang Salak'. An inquiry pursuant to s 51 of the Sarawak Land Code was held on 25 October 2011 at the office of the appellant and the total of compensation awarded to the respondents for the resumption of the said lands was RM255,051.97. Both respondents accepted the award under protest and sought to refer the matter to the High Court under s 56 of the Sarawak Land Code. The HCJ had decided that the date for the determination of the market value of the subject lands acquired was the date of the s 48 declaration publication date (to determine the compensation to be paid for the subject lands) and not the date when the s 47 notification of intended acquisition was published. Accordingly, the HCJ had agreed with the valuation report of the respondent's valuer (OW2) of a sale transacted in 2010, about a year after the issuance of the s 48 declaration and increased the total compensation from RM255,051.97 to RM568,360.30 to be a realistic and fair market value of the said lands. Dissatisfied, the appellants appealed. The issue that arose for determination was whether the

compensation to be awarded should be based on the value of the said land as of the date of s 47 notice of the Sarawak Land Code, or the declaration under s 48 of the Sarawak Land Code.

Held, allowing the appeal with costs:

(1) From the clear words of s 60(1)(a) of the Sarawak Land Code, in determining the amount of compensation to be awarded for land resumed under s 53, the court was to take into consideration the market value at the date of the publication of the notification under s 47. If no such notification under s 47 had been published, only then would the court take into consideration the market value at the date of the posting of the declaration under s 48. The HCJ, therefore, erred in law in using the date of the s 48 declaration as the valuation date to determine the compensation to be paid to the respondent (see paras 24 & 32).

(2) The HCJ erred in law in awarding the compensation based on the value of the said lands as at the date of the declaration under s 48 of the Sarawak Land Code. The HCJ had also erred in accepting the OW2's comparable sale which took place after the s 48 declaration. In order to address the issue of adequacy of the compensation due to the delay, an upward adjustment must be made to increase the compensation. The respondents had been adequately or reasonably compensated by having annual increase of 4% to the market value of the said lands from 1997 to 2012. The final rate of RM31.50 per sqmt was a fair and reasonable compensation for the said lands. In the premises, the order of the High Court was set aside. The award of the appellant was reinstated (see paras 36, 38 & 42–43).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan hakim Mahkamah Tinggi ('HMT') terhadap pemberian pampasan bagi pengambilan wajib dua keping tanah milik kedua-dua responden. Responden telah membeli dua keping tanah (sebelumnya Lot 358 Daerah Tanah Salak) pada tahun 1996 pada harga antara RM210,000 hingga RM300,000 ('tanah tersebut'). Tanah tersebut tertakluk kepada notis s 47 Kanun Tanah (Cap 81) ('Kanun Tanah Sarawak') (notis s 47) yang dikeluarkan oleh Kementerian Perancangan Sumber pada 17 Jun 1997, diterbitkan pada 16 Julai 1997, bertujuan bagi 'for the purpose of Sungai Sarawak Flood Mitigation Channel.' Melalui perisytiharan warta s 48 yang dikeluarkan oleh Kementerian Perancangan dan Pengurusan Sumber pada 8 April 2009 dan diterbitkan pada 2 Julai 2009, kedua-dua parsel tanah tersebut kemudiannya diisytiharkan bertujuan bagi 'Proposed flood bypass from Sg Sarawak to Batang Salak'. Siasatan menurut s 51 Kanun Tanah Sarawak telah dijalankan pada 25 Oktober 2011 di pejabat perayu dan jumlah pampasan yang diberikan kepada responden bagi penggunaan semula tanah tersebut adalah RM255,051.97. Kedua-dua responden menerima award

tersebut di bawah bantahan dan memohon untuk merujuk perkara tersebut ke Mahkamah Tinggi di bawah s 56 Kanun Tanah Sarawak. HMT telah memutuskan bahawa tarikh penentuan nilai pasaran tanah yang diambil adalah tarikh penerbitan pengisytiharan s 48 (bagi menentukan pampasan yang perlu dibayar untuk tanah tersebut) dan bukan tarikh apabila notis pemerolehan s 47 yang dimaksudkan telah diterbitkan. Dengan itu, HMT telah bersetuju dengan laporan penilaian penilai responden (OW2) bagi jualan yang diurus niaga pada tahun 2010, kira-kira setahun selepas pengeluaran pengisytiharan s 48 dan meningkatkan jumlah pampasan daripada RM255,051.97 kepada RM568,360.30 berdasarkan nilai pasaran yang realistik dan saksama bagi tanah tersebut. Tidak berpuas hati, perayu merayu. Isu yang berbangkit untuk penentuan adalah sama ada pampasan yang akan diberikan harus berdasarkan nilai tanah tersebut setakat tarikh notis s 47 Kanun Tanah Sarawak, atau pengisytiharan di bawah s 48 Kanun Tanah Sarawak.

Diputuskan, membenarkan rayuan dengan kos:

(1) Daripada makna jelas s 60(1)(a) Kanun Tanah Sarawak, dalam menentukan jumlah pampasan yang akan diberikan bagi tanah yang digunakan semula di bawah s 53, mahkamah perlu mengambil kira nilai pasaran pada tarikh daripada penerbitan notis di bawah s 47. Sekiranya tiada notis sedemikian di bawah s 47 telah diterbitkan, barulah mahkamah akan mengambil kira nilai pasaran pada tarikh pengeluaran pengisytiharan di bawah s 48. Oleh itu, HMT, terkhilaf dari segi undang-undang dalam menggunakan tarikh pengisytiharan s 48 sebagai tarikh penilaian untuk menentukan pampasan yang perlu dibayar kepada responden (lihat perenggan 24 & 32).

(2) HMT terkhilaf dari segi undang-undang dalam memberikan pampasan berdasarkan nilai tanah tersebut pada tarikh pengisytiharan di bawah s 48 Kanun Tanah Sarawak. HMT juga telah terkhilaf dalam menerima penjualan perbandingan OW2 yang berlaku selepas pengisytiharan s 48. Bagi menangani isu kecukupan pampasan akibat kelewatan, pelarasan lonjakan mesti dibuat untuk meningkatkan pampasan. Responden telah diberi pampasan yang mencukupi atau munasabah dengan peningkatan tahunan sebanyak 4% kepada nilai pasaran tanah tersebut dari tahun 1997 hingga 2012. Kadar muktamad RM31.50 bagi setiap meter persegi adalah pampasan yang adil dan munasabah bagi tanah tersebut. Berdasarkan premis tersebut, perintah Mahkamah Tinggi diketepikan. Award perayu telah dikembalikan semula (lihat perenggan 36, 38 & 42–43).]

Cases referred to

Buan Joong Sdn Bhd v Superintendent of Lands & Surveys Kuching Division [2005] 5 MLJ 404; [2005] 2 CLJ 910, CA (refd)

CIMB Bank Bhd (formerly known as Bumiputera Commerce Bank Bhd) v Sebang Gemilang Sdn Bhd & Anor [2018] 3 MLJ 689, FC (refd)
Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1, FC (refd)
Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching [2014] 6 MLJ 439; [2014] 3 CLJ 467, CA (refd)
Mohd Noor Othman & Ors v Hj Mohd Ismail Hj Ibrahim & Ors & Another Case [1998] 3 MLJ 82; [1988] 2 CLJ 597; [1988] 1 CLJ Rep 224, SC (refd)
Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor [2016] MLJU 1712; [2016] 3 CLJ 591, CA (refd)
Superintendent of Land and Survey Department Kuching-Divisional Office & Anor v Ratnawati bt Hasbi Mohamad Suleiman [2020] 2 MLJ 553; [2020] 2 CLJ 425, FC (refd)
Superintendent of Lands and Surveys, Kuching Division v Robert Lee Chang Hock [2017] 1 MLJ 511; [2016] 1 LNS 1130, CA (refd)
Superintendent Of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor [1980] 1 MLJ 58; [1979] 1 LNS 103, FC (refd)

Legislation referred to

Land Code (Cap 81) ss 46, 47, 48, 51, 53, 56, 60(1), 60(1)(a), 66, Part IV

Appeal from: Land Reference No KCH-15-1/1 of 2018 (High Court, Kuching)

Ronald Felix Hardin (Sarawak State Attorney-General's Chambers) for the appellant.
Arthur Lee Cheng Chuan (Sylvester Lai Tze Yang with him) (Arthur Lee, Lin & Co) for the respondents.

Azizah Nawawi JCA:

[1] This is an appeal against the decision of the learned High Court judge dated 27 May 2019 with regard to the award of compensation for compulsory acquisition of two parcels of land belonging to both the respondents.

[2] The learned judge has decided that the date for the determination of the market value of the subject lands acquired under Part lV of the Sarawak Land Code (Cap 81) for public purposes, is the date of s 48 declaration publication date (to determine the compensation to be paid for the subject lands) and not the date when the s 48 notification of intended acquisition was published. Hence, this appeal concerns the legal basis upon which the learned judge has made the award of compensation for the subject lands.

[3] Having considered the appeal records and the submissions of the parties,

this court has allowed the appeal with costs. Our decision was unanimous and these are our grounds for allowing the appeal.

THE BACKGROUND FACTS

[4] The respondents have bought the subject lands (previously Lot 358 Salak Land District) on 23 December 1996 at the price of between RM210,000 to RM300,000 ('the said lands').

[5] The said lands was subject to s 47 notification issued by the Ministry of Resource Planning on 17 June 1997, published on 16 July 1997, for the intended use 'for the purpose of Sungai Sarawak Flood Mitigation Channel'.

[6] Part of Lot 358 Salak Land District, where the land areas containing 9,040.5sqmt, were acquired for the Jalan Rambungan highway project sometime in year 2005 and both the respondents were compensated at the rate of RM23 per sqmt. Both respondents have accepted the compensation without protest. The balance of Lot 358 is then divided into two lots, which formed the subject matter in this appeal.

[7] Vide a s 48 *gazette* declaration issued by the Ministry of Planning and Resource Management on 8 April 2009 and published on 2 July 2009, both parcels of the said lands were later declared to be for the 'Proposed Flood Bypass From Sg Sarawak to Batang Salak'.

[8] An inquiry pursuant to s 51 of the Sarawak Land Code was held on 25 October 2011 at the office of the Superintendent of Lands and Surveys Department, Kuching Division and the total of compensation awarded to the objectors/respondents for the resumption of the said lands are as follows:

Land:						
(i)	Lot 4000	5,728 m2	@	31.50 p.s.m.	=	RM180,432.00
(ii)	Part of 4004	2,349 m2	@	31.50 p.s.m.	=	RM73,993.50
				Total	=	RM254,425.50
+	Crops:	= RM626.47				
+	Building & Structures:	= RM Nil				
Less						
-	Total outstanding premium	= RM Nil				
-	Land rent	= RM Nil				
-	Other dues	= RM Nil				
				Total	=	RM255,051.97

[9] Both respondents accepted the award under protest and sought to refer

the matter to the High Court under s 56 of the Sarawak Land Code.

[10] The High Court, using the date of s 48 declaration as the 'valuation date', (2 July 2009), accepted the respondent's valuer's (OW2) valuation and awarded as follows:

Land:

(i)	Lot 4000	5,728 m2 @ 41.00 p.s.m.	= RM234,848.00(
ii)	Part of 4004	2,349 m2 @ 41.00 p.s.m.	= RM333,512.30
		Total	= RM568,360.30

[11] Both the said lands were resumed by the appellant vide memorandum of declaration of resumption of land vide instrument No L679/2012, which was duly registered on 9 January 2012 as shown in appendix H of the statutory statement.

DECISION OF THE HIGH COURT

[12] The High Court had addressed the following issues:

(i) whether the compensation to be awarded should be based on the value of the said land as of the date of s 47 notice of the Sarawak Land Code, or the Declaration under s 48 of the Sarawak Land Code; and

(ii) what is the quantum of compensation to be awarded.

[13] With regards to issue (i), the learned High Court judge has considered both the decisions of this court in *Jais bin Chee & Ors v Superintendent of Lands and Surveys Kuching Division, Kuching* [2014] 6 MLJ 439; [2014] 3 CLJ 467 and *Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor* [2016] MLJU 1712; [2016] 3 CLJ 591, where in the latter case, this court did not agree with the decision in *Jais Chee* and held that the material date to determine compensation to be awarded is the date of the s 47 notice, not the s 48 declaration.

[14] However, the learned judge opted to apply the decision in *Jais Chee* over *Surianto*, on the following ground:

> [15] In the present case, there is no explanation as to why it took that long for the respondent to hold such inquiry. Hence, I am of the opinion that such delay is unreasonable. In the digital and IT era there should be no excuse for the delay in holding the enquiry as it would deprive the objectors from utilizing the compensation money at the earliest possible time. In the circumstances, I am of the opinion that, for the purpose of determining the fair amount of compensation, the value of the said land as at the date of s 48 notice should be used.
>
> [16] Based on the above reason, I would prefer to follow the decision in *Jais bin Chee*

A and would consider the comparable sale as at s 48 notice for the purpose of determining the amount of compensation.

[15] On issue (ii), the learned judge agreed with the valuation report of the respondent's valuer of a sale transacted in 2010, about a year after the issuance B of the s 48 declaration, to reflect what the learned judge held to be a realistic and fair market value of the said lands. The learned judge increased the total compensation from RM255,051.97 to RM568,360.30.

C OUR FINDINGS

[16] The central feature of appellate intervention is trite, that is to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. This had been D explained by the Federal Court in the case of *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1, where the Federal Court held as follows:

> [14] In our view, the *Court of Appeal in citing these cases had clearly borne in mind the central feature of appellate intervention, ie to determine whether or not the trial court* E *had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence*. In so doing, the Court of Appeal was perfectly entitled to examine the process of evaluation of the evidence by the trial court. Clearly, the phrase 'insufficient judicial appreciation of evidence' merely related to such a process. This is reflected in the Court of Appeal's restatement that a judge who was F required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. The Court of Appeal further reiterated the principle central to appellate intervention, ie that a decision arrived at by a trial court without judicial appreciation of the evidence might be set aside on G appeal. This is consistent with the established plainly wrong test. (Emphasis added.)

[17] In another case, the Federal Court in *CIMB Bank Bhd (formerly known as Bumiputera Commerce Bank Bhd) v Sebang Gemilang Sdn Bhd & Anor* [2018] 3 MLJ 689 held as follows:

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> [38] The issue of knowledge of the equitable assignment is entirely a question of facts. Both the courts below concluded that the appellant had knowledge of the equitable assignment based on the facts and circumstances of the case. *It is trite law that an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its judicial decision or there has been no or* I *insufficient judicial appreciation of evidence* (see *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1). (Emphasis added.)

[18] Bearing in mind the above cases, we will now deal with the issues raised by the parties.

Issue (i): whether the compensation to be awarded should be based on the value of the said land as of the date of s 47 notice of the Sarawak Land Code, or the declaration under s 48 of the Sarawak Land Code

[19] It is common ground that the statutory scheme or process of compulsory acquisition of land under the Sarawak Land Code is governed by Part IV of the Sarawak Land Code. The scheme starts with a decision of the Minister that any alienated land is likely to be needed for any of the purposes specified in s 46. Thereafter, the land may be resumed or acquired under ss 47 and 48 of the Sarawak Land Code or under s 48 alone. The relevant part of the said provisions read:

> Section 47 Power to enter and survey.
>
> (1) Whenever the Minister decides that any alienated land or Native Customary Land or Kampung Reserve is likely to be needed for any of the purposes specified in section 46, the Superintendent shall cause a public notice of the substance of such decision to be given at convenient places in such locality, and thereupon any officer or other person either generally or specially authorised by the Minister in this behalf and his servants and workmen may enter upon such land and may survey, bore, take levels, set out and mark boundaries and do all other acts necessary to ascertain whether the land is suitable for such purpose.
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> Section 48 Declaration that land is required for a public purpose.
>
> (1) Whenever it appears to the Minister that any alienated land or Native Customary Land or Kampung Reserve is needed for any of the purposes specified in section 46, the Minister shall make a declaration to that effect.

[20] The operation of both ss 47 and 48 of the Sarawak Land Code has been explained by the Federal Court in the case of *Superintendent of Lands & Surveys, Fifth Division, Limbang v Lim Teck Hoo & Anor* [1980] 1 MLJ 58; [1979] 1 LNS 103, where Lee Hun Hoe CJ (Borneo) stated as follows:

> Part IV of the Land Code, containing ss 45 to 83, makes provisions for the resumption of alienated land. Section 46 sets out the purpose for which land may be resumed or acquired. *Under the Land Code it is possible for government to acquire land by using either a combination of ss 47 and 48 or 48 alone. Sections 47 and 48 enable respective notifications to be published to indicate that land 'is likely to be needed' and 'is needed'*. Both sections have the effect of freezing the value of land for the purpose of determining compensation as at the date of publication of the notification. The use of either ss 47 or 48 would seem to depend upon whether the acquisition is a 'possibility' or a 'certainty'. Other factors, such as, urgency and size of land are relevant. In most cases, government would use s 47 in order to enter the land, examine it and ascertain whether it is suitable for the purpose for which it is needed. If it is found to be suitable then government would make a declaration that the land is needed for a particular public purpose under s 48. Pursuant to s 49 the Superintendent would prepare plans for the land and cause notices to be published and deal with claims for compensation. He would then hold an inquiry and make

award under s 51. Following this, he may exercise his power under s 53 to take possession of the land. Pursuant to s 54 the Registrar would make entry in respect of such land in the register and calling on the landowners to deliver up the land title for cancellation and issue new title or titles. Section 54(4) says that 'the Superintendent shall, in cases where part only of the land has been acquired, cause to be prepared documents of title for the unacquired part or parts of the land and shall after cancellation of the existing documents of title issue such documents of title to the person entitled thereto'. If his award is not accepted the superintendent would refer the matter to the High Court for decision. (Emphasis added.)

[21] From the decision of the minister to issue a notification under s 47 of the Sarawak Land Code and a declaration under s 48 or directly make a declaration under s 48, the next stage is for the Superintendent of the Land & Survey Department to proceed with an inquiry to determine and award compensation.

[22] At this stage, the issue for consideration is the interpretation of s 60(1)(a) of the Sarawak Land Code, which is the subject matter of this appeal, and it reads as follows:

60 Matters to be considered in determining compensation

(1) In determining the amount of compensation to be awarded for land resumed under this Part, the Court shall take into consideration the following matters and no others —

(a) the market value at the date of the publication of the notification under section 47 or, if no such notification has been published, the market value at the date of the posting of the declaration under section 48.

[23] In *Mohd Noor Othman & Ors v Hj Mohd Ismail Hj Ibrahim & Ors & Another Case* [1998] 3 MLJ 82; [1988] 2 CLJ 597; [1988] 1 CLJ Rep 224 , the Supreme Court held that in interpreting words of statute, it is trite law that where the words of a statute are clear there is no room for the court to go beyond the expressed language of the statute.

[24] From the clear words of s 60(1)(a) of the Sarawak Land Code, we are of the considered opinion that in determining the amount of compensation to be awarded for land resumed under s 53, the court is to take into consideration the market value at the date of the publication of the notification under s 47. If no such notification under s 47 has been published, only then will the court take into consideration the market value at the date of the posting of the declaration under s 48.

[25] This is so as the acquisition of the land can be made either by invoking both ss 47 and 48 together or invoking s 48 alone. If ss 47 and 48 of the

Sarawak Land Code are invoked together, the determination of compensation will be the market value at the date of the publication of the notification under s 47. If s 48 is invoked without a notification under s 47, then the consideration will be the market value at the date of the posting of the declaration under s 48. In other words, s 48 is only applicable if there is no notification under s 47.

[26] In *Lim Teck Hoo*, the Federal Court held that s 48 is only applicable if no notification under s 47 has been published. Therefore, where both sections are used, the earlier date (under s 47) must be taken as the material date for determining compensation.

[27] In *Buan Joong Sdn Bhd v Superintendent Of Lands & Surveys Kuching Division* [2005] 5 MLJ 404; [2005] 2 CLJ 910, this court has held that the date of valuation of the acquired land ought to be the date of the public notification issued under s 47 and the date of the declaration made under s 48 could not be taken as the material date of valuation as the plain words of s 60(1) did not permit such an interpretation.

[28] The same interpretation of s 60(1)(a) of the Sarawak Land Code was applied by this court in *Surianto Abdul Hamid*, where Idrus Harun JCA stated at pp 601–602 (CLJ):

> [14] Viewed objectively, we need only say on this aspect that the *plain words of s 60(1)(a) allows only one interpretation in that the section requires the court, in determining the compensation to be awarded on the subject lands resumed under s 53, to take into consideration the market value as at the date of the publication of the notification under s 47*. Such interpretation is clearly supported by the Court of Appeal's decision in the case of *Buan Joong Sdn Bhd v Superintendent Of Lands & Surveys Kuching Division* [2005] 5 MLJ 404; [2005] 2 CLJ 910 *wherein it was held that the date of valuation of the acquired land ought to be the date of the public notification issued under s 47 and the date of declaration made under s 48 could not be taken as the material date of valuation as the plain words of s 60(1) did not permit such an interpretation*.
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> [15] We would like to emphasise that there is, in this regard, no provision in the Land Code which stipulates the date of inquiry to be the valuation date. Section 60(1) which shows clarity of legislative intention is expressed in a very strong mandatory tone as evident by the use of the words 'shall' followed in the same breath with a strict direction 'and no others' which plainly prohibit the court from considering any market value that does not come within the two limbs of s 60(1)(a) or other than the value as it stood at the time the notification was published in s 47. There is not the slightest room for doubt that any other interpretation of s 60(1) will result, not only in a non-compliance with the mandatory requirement of the section but also will give rise to a situation that entails a further violation of s 66. This is because, s 66 as earlier stated requires every award to specify the amount awarded under s 60(1)(a) only indicating that any other amount awarded which is not in

A accordance with s 60(1)(a) would not be an award that could be specified under s 66'. (Emphasis added.)

[29] Therefore, this court in *Surianto* has also held that from the plain words of s 60(1)(a) of the Sarawak Land Code, the date of valuation of the acquired land should be the date of the public notification issued under s 47.

[30] The case of *Surianto* was applied by this court *Superintendent of Lands and Surveys, Kuching Division v Robert Lee Chang Hock* [2017] 1 MLJ 511; [2016] 1 LNS 1130 where Tengku Maimun Tuan Mat JCA (now CJ) held that from a plain reading of ss 60(1)(a) and 66 of the Sarawak Land Code, the valuation date should be the s 47 notification.

[31] The above interpretation is supported by the decision of the Federal Court in *Superintendent of Land and Survey Department Kuching-Divisional Office & Anor v Ratnawati bt Hasbi Mohamad Suleiman* [2020] 2 MLJ 553; [2020] 2 CLJ 425 where the majority judgment has cited with approval the decision of this court in *Surianto*. In the majority judgment delivered by Idrus Harun FCJ, His Lordship held as follows:

> [23] It is trite that the various processes of compulsory acquisition of land in Sarawak is governed by Part IV of the Land Code. These processes begin with a decision of the Minister that any alienated land is likely to be needed *for any of the purposes specified in s 46 of the Land Code after which the land may be resumed or acquired using either a combination of ss 47 and 48 of the Land Code or s 48 alone ...*
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> ...
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> [26] ... there is in fact a two-stage approach involved in the process of compulsory resumption of land under Part IV of the Land Code, namely:
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> (a) a decision by the Minister either to issue a notification under s 47 that the land is likely to be needed for a public purpose or make a declaration under s 48 by him that the land is needed for a public purpose (the first stage); and
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> (b) thereafter, the Superintendent (the first appellant herein) would proceed to, inter alia, hold an inquiry to determine and award compensation (the second stage).
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> [41] The general principle of law relating to land acquisition under the Land Code is that both ss 47 and 48, read together with s 60(1)(a) of the Land Code, have the effect of freezing the value of land for the purpose of determining compensation as at the date of publication of the notification under either ss 47 or 48.
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> ...
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> [50] The words 'shall' and 'no others' appearing in the chapeau of s 60 of the Land Code plainly show in express and unmistakable terms that it is peremptory in nature. *Section 60 thus makes it mandatory for the court to give effect to the provision in*

considering the adequate amount of compensation to be awarded (see the Court of Appeal decision in *Superintendent of Lands & Surveys Samarahan Division v Surianto bin Abdul Hamid & Anor* [2016] MLJU 1712; [2016] 3 CLJ 591 at para [26]). *We accept the decision of the Court of Appeal in the above case that s 60 of the Land Code as it stands is not violative of art 13 of the Federal Constitution*. It is not being challenged in this appeal that Part IV of the Land Code which includes s 60 is unconstitutional and repugnant to the Federal Constitution. In fact, we would go so far as to say that s 60 is the law envisaged by art 13 that allows a person such as the respondent to be deprived of her property as long as she is so deprived in accordance with that law which in actuality requires the court to consider various matters prescribed therein in order to ensure that the respondent shall be adequately compensated for the compulsory acquisition of the subject land.

[51] In this case, s 60 of the Land Code meets the constitutional standards of an expropriatory law laid down by art 13 of the Federal Constitution . *Since there is no s 47 notification in respect of the subject land in this action, in terms of s 60, the award of compensation was based on the market value of the subject land as at the date of the s 48 declaration*. The first appellant obviously acted in accordance with the provisions of s 60 of the Land Code. (Emphasis added.)

[32] Therefore, based on the decision of the Federal Court in *Lim Teck Hoo*, the decisions of this court in *Buan Joong Sdn Bhd*, *Surianto*, *Robert Lee Chang Hock* and the decision of the Federal Court in *Ratnawati*, we therefore agreed with the appellant that the learned judge erred in law in using the date of the s 48 declaration as the valuation date to determine the compensation to be paid to the respondent. We are of the considered opinion that based on the plain reading of s 60(1)(a) of the Sarawak Land Code, the valuation date should be the s 47 notification. In the present case, the s 47 notification was issued on 16 July 1997.

[33] We are also of the considered opinion that the learned judge has erred in law when he applied the decision in *Jais Chee* when this court in *Surianto* has clearly held that the case of *Jais Chee* 'is a clear departure from the mandatory provisions under s 60(1)(a) which requires the court to apply the date the notice under s 47 was published as the material date in determining the market value of the subject lands' (see para [23] of *Surianto*).

Issue (ii): Quantum of Compensation

[34] The next issue is on the quantum of compensation to be awarded. The learned judge has applied the sales data around the s 48 declaration as those sales were transacted higher than the comparable sales at the s 47 notification. The learned judge held that it would be unfair to the respondent due to 14 years delay (from the s 47 notification dated 16 July 1997 to the s 51 inquiry on 25 October 2011) to make the award based on the s 47 notification.

[35] It is not in dispute that the s 47 notification was issued on 16 July 1997, the s 48 declaration was dated 2 July 2009 and the inquiry under s 51 was conducted on 25 October 2011. There was thus a delay of 14 years in making the award for compensation.

[36] However, as alluded to above, we are of the considered opinion that the learned judge has erred in law in awarding the compensation based on the value of the said lands as at the date of the declaration under s 48 of the Sarawak Land Code. The learned judge has erred in accepting the respondent's valuer's comparable sale, of sale No 3 dated 15 January 2010, which took place after the s 48 declaration. In *Robert Lee Chang Hock*, this court had rejected both valuation reports of the parties, as the valuation report of the appellant was based on the s 48 declaration whilst the respondent's valuation report was based on the inquiry dates. This court held that both dates were contrary to s 60(1)(a) of the Sarawak Land Code and the case was remitted back to the High Court for the ascertainment of the market value of the acquired parcels as at the date of the s 47 notification.

[37] On the issue of delay, this court in *Surianto* has addressed this issue in the following manner:

> [29] Accordingly, with respect, while we agree with *Jais Chee*, supra that a delay in making the award of compensation might cause the compensation awarded to be inadequate, following the Federal Court's decision in *Ong Gaik Kee*, we do not think that it is necessary to go so far as to invoke cl 2 of art 13 for the purpose of determining the fair market value of the subject lands and thus adequate compensation to be awarded to the respondents. *We are of the opinion that the respondents can still be adequately compensated within the existing legal framework provided for in Part IV of the Land Code, not by altering the valuation date which is mandatorily required to be used under s 60(1)(a), but instead by determining the market value of the subject lands in accordance with the said section and from this base market value, with admissible evidence adduced that injustice and inadequacy of compensation proven, a favourable and upward adjustment is made to increase the compensation in view of the 12 years lapse between the date of the publication of notice under s 47 and the date of the inquiry under s 51. In this manner, the award will be truly reflective of adequate compensation and at the same time in compliance with ss 60(1)(a) and 66 of the Land Code*. (Emphasis added.)

[38] Therefore in order to address the issue of adequacy of the compensation due to the delay, an upward adjustment must be made to increase the compensation. This will be based on the factual matrix of each case.

[39] In the present appeal, if we look at the reports of the valuers, as at the date of the s 47 notification, that is 16 July 1997, the respondent's valuer has opined that the market value of the said lands would be RM10.30 per sqmt, whereas the appellant's valuer (RW1) had opined the same to be RM20.50 per

sqmt. In fact in 2005, the respondents were compensated at the rate of RM23 per sqmt for the earlier acquisition of parts of the said lands.

[40] Apart from giving a higher rate of the market value of the said lands as at 16 July 1997, RW1 has taken into consideration the time factor adjustment at 4% and had provided a compounded adjustment rate of 4%pa for 15 years, from 16 July 1997 to the date of resumption on 9 January 2012. In *Tan Kheng Pang v Superintendent of Lands & Surveys*, Land Reference No 15-3–2007-III consolidated with *Tan Kheng Pang v Superintendent of Lands & Surveys*, Land Reference No 15-4–2007-I, where there was a lapse of 32 years between the date of the 1947 notice and date of resumption of the acquired land, the High Court held that the relevant date to determine the market value was the date of the s 47 notice and to make up the loss of 32 years, the High Court accepted the adjustment made by the respondent's valuer by adding a compound rate of 8%pa to the value of the land (see *Surianto*).

[41] With regard to the respondent's contention that because of the acquisition, the remaining portion is less economical for development and that this is a relevant consideration to increase the valuation rate, we find that the learned judge has made a finding of fact that the implementation of the flood mitigation project would enhance the value of that land.

[42] Therefore, we are of the considered opinion that the respondents have been adequately or reasonably compensated by having annual increase of 4% to the market value of the said lands from 1997 to 2012. We find that the final rate of RM31.50 per sqmt is a fair and reasonable compensation for the said lands.

CONCLUSION

[43] Premised on the reasons enumerated above, we find merits in the appeal and we therefore allowed the appeal with costs. We set aside the order of the High Court and reinstate the award of the Superintendent of Land and Survey Department dated 21 November 2011.

Appeal allowed with costs.

Reported by K Selvaraju